

ESTTA Tracking number: **ESTTA215303**

Filing date: **06/03/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91183753
Party	Defendant Diallo Yassinn Patrice
Correspondence Address	Diallo Yassinn Patrice 2 Square Tribord COURCOURONNES 91080, FRANCE
Submission	Answer
Filer's Name	Yassinn Patrice Diallo
Filer's e-mail	yassinn.diallo@laposte.net
Signature	/yassinn patrice diallo/
Date	06/03/2008
Attachments	ANSWER TO HEAVEN HILL OPPOSITION 91183753.pdf (5 pages)(125569 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of US Trademark Application for Registration for the US Trademark :

“ HYPNOTIZER”

Serial No. 77266196

Filing date: June 2, 2008

HEAVEN HILL DISTILLERIES, INC) Opposition No. 91183753

Opposer,)

Vs)

)

DIALLO YASSINN PATRICE,)

Applicant.)

APPLICANTS ANSWER AND AFFIRMATIVE DEFENSES TO NOTICE OF OPPOSITION

Applicant, DIALLO YASSINN PATRICE a citizen of France, resident in 2 Square Tribord, 91080 Courcouronnes, France, denies that if his application serial N°77266196 for the mark HYPNOTIZER is allowed to issue as a registration, it will be harmed Opposer Heaven Hill Distilleries inc, a Kentucky corporation with its principal place of business at 1064 Loretto Road, Bardstown, Kentucky, U.S.A 40004.

Applicant, DIALLO YASSINN PATRICE, hereby submits the instant answer to opposition regarding the opposition to trademark application filed by opposer HEAVEN HILL DISTILLERIES, Inc as follows :

1. Answering paragraph 1 of the Opposition, applicant has insufficient information or belief to answer the allegations contained therein and, based thereon, denies each and every allegation contained in such Paragraph 1.
2. Answering paragraph 2 of the Opposition, applicant has insufficient information or belief to answer the allegations contained therein and, based thereon, denies each and every allegation contained in such Paragraph 2.
3. Answering paragraph 3 of the Opposition, applicant has insufficient information or belief to answer the allegations contained therein and, based thereon, denies each and every allegation contained in such Paragraph 3. Moreover, Mr. DIALLO Yassinn Patrice made a request for registration for the mark HYPNOTIZER in the USA on October 7, 2005 for the first time application No. 79019547, not on August 28, 2007, as attempts to make people believe the party opponent.
4. Answering paragraph 4 of the Opposition, applicant has insufficient information or belief to answer the allegations contained therein and, based thereon, denies each and every allegation contained in such Paragraph 4.
5. Answering paragraph 5 of the Opposition, applicant has insufficient information or belief to answer the allegations contained therein and, based thereon, denies each and every allegation contained in such Paragraph 5.
6. Applicant admits that its mark is HYPNOTIZER, for the following products and beverages : Alcoholic beverage produced from a brewed malt base with natural flavors, Alcoholic beverages of fruit, Alcoholic fruit extracts, Alcoholic malt coolers, Alcoholic punch, Cachaca, Cognac, Distilled Spirits, Fruit wine, Gin, Hard cider,

Natural sparkling wines, Prepared alcoholic cocktail, Prepared wine cocktails, Rum, Sparkling fruit wine, Sparkling grape wine, Sparkling wine, Tequila, Vodka, Whiskey, Wine coolers, Wines .

7. Answering paragraph 7 of the Opposition, HYPNOTIZER is used for specifics beverages : Alcoholic beverage produced from a brewed malt base with natural flavors, Alcoholic beverages of fruit, Alcoholic fruit extracts, Alcoholic malt coolers, Alcoholic punch, Cachaca, Cognac, Distilled Spirits, Fruit wine, Gin, Hard cider, Natural sparkling wines, Prepared alcoholic cocktail, Prepared wine cocktails, Rum, Sparkling fruit wines, Sparkling grape wine, Sparkling wine, Tequila, Vodka, Whiskey, Wine coolers, Wines. Applicant denies all other allegations contained in such Paragraph 7.
8. Answering paragraph 8 of the Opposition, applicant has insufficient information or belief to answer the allegations contained therein and, based thereon, denies each and every allegation contained in such Paragraph 8.
9. Answering paragraph 9 of the Opposition, applicant has insufficient information or belief to answer the allegations contained therein and, based thereon, denies each and every allegation contained in such Paragraph 9. Moreover, the U.S. Trademark Office during office records search for the application to HYPNOTIZER said: The office records have been search and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2 (d), 15 USC 1052 (d).
10. Answering paragraph 10 of the Opposition, applicant has insufficient information or belief to answer the allegations contained therein and, based thereon, denies each and every allegation contained in such Paragraph 10.

AFFIRMATIVE DEFENSES

1. No likelihood of confusion, mistake or deception of purchasers or potential purchasers exists between the Opposer 's claimed use of its HPNOTIQ mark and the Applicant's use of its trademark HYPNOTIZER because the marks are easily distinguishable in appearance, sound and meaning.
2. No likelihood of confusion, mistake or deception of purchasers or potential purchasers exists between the Opposer 's claimed use of its HPNOTIQ mark and the Applicant's use of its trademark HYPNOTIZER because the marks are used in connection with different products and beverages, and marketed to different classes of consumers. Wherefore, Applicant, DIALLO YASSINN PATRICE, respectfully requests that the opposition be dismissed with prejudice and his application Serial No. 77266196 be registered.

Dated : June 2, 2008

Respectfully submitted

DIALLO YASSINN PATRICE

Applicant

PROOF OF SERVICE

I hereby certify that a true and correct copy of Applicant's Answer and Affirmative Defenses to Notice of Opposition was served on the following attorney for Opposer by deposit in the French Mail, in Paris France, in a sealed envelope, with first class postage fully prepaid this 2nd day of June, 2008.

Matthew A. Williams

Wyatt Tarrant & Combs, LLP

500 West Jefferson Street, Suite 2800

Louisville, KY 40202

UNITED STATES.

502-562-7378 Telephone

Dated : June 2, 2008

DIALLO YASSINN PATRICE